

**STATE OF NEW HAMPSHIRE
SUPREME COURT
ADVISORY COMMITTEE ON JUDICIAL ETHICS**

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QUESTION AND FACTS PRESENTED:

A part-time district court judge has been a member of a national legal historical society for a number of years. Recently, the judge has been asked to serve as the society's New Hampshire membership chair. This position will involve soliciting judges and lawyers, as well as other individuals interested in legal history. The society is a private, non-profit organization devoted to expanding public awareness of certain aspects of national legal history. Membership in the society requires a monetary contribution. The judge has asked the Committee whether and to what extent the judge can serve the organization as its state membership chair.

DISCUSSION AND APPLICATION OF CODE OF CONDUCT:

The analysis of this inquiry centers on Canon 4(C)(3)(b) of the Code of Judicial Conduct. This section of the Code, with which part-time judges are required to comply (see Application of the Code of Judicial Conduct, Paragraph C), provides that a judge may serve as an officer, director, trustee or non-legal advisor of a non-profit educational, religious, charitable, fraternal or civic organization subject to certain enumerated restrictions. A judge may not, however, "personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism." Canon 4(C)(3)(b)(iii). Although a judge may assist in planning fund-raising and may participate in the management and investment of organization funds, the judge "shall not personally participate in the solicitation of funds or other fund-raising activities." Canon 4(C)(3)(b)(i). Moreover, a judge "shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation." Canon 4(C)(3)(b)(iv).

The commentary to this section explains that these restrictions are necessary because of "the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control." Thus, a judge may not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except under certain enumerated conditions, two of which are relevant here. A judge may solicit memberships "if neither those persons nor persons with

whom they are affiliated are likely ever to appear before the court on which the judge serves.” If the judge is an officer of the organization, the judge may send “a general membership solicitation mailing over the judge’s signature.” The commentary further explains that use of an organization’s letterhead for membership solicitation is permissible “provided the letterhead lists only the judge’s name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge’s judicial designation.”

ADVISORY OPINION ON THE QUESTION PRESENTED:

It is the Committee’s opinion that the requesting judge may serve as the society’s state membership chair as long as the judge carefully complies with the Code’s restrictions. The judge may not personally participate in membership solicitation if such solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism. Although membership in the society requires a monetary contribution, it does not appear that membership solicitation would constitute “essentially a fund-raising mechanism.” If so, however, the judge may not participate in such de facto fund-raising. See N.H. Advisory Committee on Judicial Ethics, Opinion 2002-ACJE-09. The judge may personally solicit memberships only if the subjects of the solicitation are not likely to ever appear before the court on which the judge serves. The judge’s name and society position may appear on society letterhead used for membership solicitation, and the judicial title may also appear if comparable designations are shown for others listed on the letterhead. No membership solicitation may be sent on judicial or court stationery.

THIS ADVISORY OPINION IS ISSUED BY UNANIMOUS CONCURRENCE OF ALL COMMITTEE MEMBERS.

Carol Ann Conboy, Chair

CAUTIONARY STATEMENT

This opinion is advisory only and not binding on the judicial conduct committee, which may, in its discretion, consider compliance with an advisory opinion by the requesting individual as a good faith effort to comply with the Code of Judicial Conduct. Rule 38-A(4)(c).